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109TH CONGRESS
1ST SESSION

H. R. 3617

To amend part B of title XVIII of the Social Security Act to provide for value-based purchasing in the payment for physicians' services under the Medicare Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. BEAUPREZ, Mr. BOUSTANY, Mr. BURGESS, Mr. CAMP, Mr. ENGLISH of Pennsylvania, Mr. GINGREY, Mr. SAM JOHNSON of Texas, Mr. LEWIS of Kentucky, Mr. NEY, Mr. RAMSTAD, Mr. SHAW, Mr. SHAYS, Mr. UPTON, Mr. WELDON of Florida, and Mrs. KELLY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend part B of title XVIII of the Social Security Act to provide for value-based purchasing in the payment for physicians' services under the Medicare Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Value-Based Purchasing for Physicians' Services Act of 2005''.

SEC. 2. VALUE-BASED PURCHASING FOR MEDICARE PHYSICIANS' SERVICES.

(a) LINK OF VALUE-BASED PURCHASING TO PAYMENT FOR SERVICES.—Subsection (d) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in paragraph (1)(A), by inserting ''and before 2006'' after ''beginning with 2001'';

(2) in paragraph (1)(A), by inserting before the period at the end the following: '', and for years beginning with 2006, multiplied by the update established under paragraph (6) or a succeeding paragraph, as is applicable to the year involved'';

(3) by adding at the end the following new paragraphs:

''(6) UPDATE FOR 2006.—The update to the single conversion factor established in paragraph (1)(C) for 2006 shall be 1.5 percent.

''(7) UPDATE FOR 2007 AND 2008.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the update to the single conversion factor established in paragraph (1)(C) for 2007 and 2008 shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved minus 1 percentage point.

''(B) INCREASE FOR SUBMITTING INFORMATION.—In the case of physicians' services furnished by a billing unit under this part that is a new billing unit (as defined by the Secretary) or that complies with the requirement of subsection (k)(4) for the submission of information for 2007 or 2008, the update to the single conversion factor established in paragraph (1)(C) for the year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.

''(C) TREATMENT.—In computing the single conversion factor under paragraph (1)(C)—

''(i) for 2008, the update for 2007 shall be treated as the update described in subparagraph (B); or

''(ii) for 2009 or a succeeding year, the updates for 2007 and 2008 shall be treated as the updates described in subparagraph (B).

''(8) UPDATE FOR 2009 AND SUCCEEDING YEARS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the update to the single conversion factor established in paragraph

(1)(C) for 2009 and each succeeding year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved minus 1 percentage point.

''(B) INCREASE FOR SUBMITTING INFORMATION AND MEETING QUALITY AND EFFICIENCY STANDARDS.—In the case of physicians' services furnished by a billing unit under this part that is a new billing unit (as defined for purposes of paragraph (7)(B)) or that both complies with the requirement of subsection (k)(4) for the submission of information for a year (beginning with 2009) and meets (or is deemed to meet) performance objectives applicable to the billing unit for the year under subsection (k)(5), the update to the single conversion factor established in paragraph (1)(C) for the year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.

''(C) TREATMENT.—In computing the single conversion factor under paragraph (1)(C) for 2010 or a succeeding year, the updates for each preceding year (beginning with 2009) shall

be treated as the update described in subparagraph (B).''.

(b) ESTABLISHMENT OF VALUE-BASED PURCHASING PROGRAM.—Section 1848 of such Act is further amended by adding at the end the following new subsection:

''(k) VALUE-BASED PURCHASING PROGRAM.—

''(1) SELECTION OF QUALITY AND EFFICIENCY MEASURES (Q & E MEASURES).—

''(A) IN GENERAL.—As part of the rulemaking process for payments under this section for 2007, the Secretary shall provide for the selection of quality measures and efficiency measures (in this subsection referred to as 'Q-measures' and 'E-measures', respectively, or as 'Q & E measures' collectively) consistent with and in accordance with this paragraph and paragraph (2).

''(B) LEVEL OF MEASUREMENT.—Q-measures and E-measures shall be measures that provide for assessment of quality and efficiency, respectively, in the provision of services to individuals enrolled under this part at the level of a billing unit under this part.

"(C) CHARACTERISTICS OF MEASURES.—To the extent feasible and practicable, Q & E measures shall—

"(i) include a mixture of outcome measures, process measures (such as furnishing a service), and structural measures (such as the use of health information technology for submission of measures);

"(ii) include efficiency measures related to clinical care (such as overuse, misuse, or underuse);

"(iii) include measures of care furnished to frail individuals over the age of 75 and to individuals with multiple complex chronic conditions;

"(iv) be evidence-based, if pertaining to clinical care;

"(v) be consistent, valid, practicable, and not overly burdensome to collect;

"(vi) be relevant to physicians and other practitioners, individuals enrolled under this part, and the Federal Supplementary Medical Insurance Trust Fund;

"(vii) include measures that, taken as a whole, provide a balanced measure of

performance of a billing unit under this part;

''(viii) include measures that capture individuals' assessment of clinical care provided; and

''(ix) include measures that assess the relative use of resources, services, or expenditures.

''(D) FAIRNESS.—To the extent feasible and practicable, this subsection shall be implemented in a manner that—

''(i) takes into account differences in individual health status;

''(ii) takes into account individual's compliance with orders;

''(iii) does not directly or indirectly encourage patient selection or de-selection by billing units under this part;

''(iv) reduces health disparities across groups and areas; and

''(v) uses appropriate statistical techniques to ensure valid results.

''(E) APPLICATION TO NON-PHYSICIAN PRACTITIONERS AND OTHER SUPPLIERS FOR WHICH PAYMENT IS MADE UNDER OR IN RELA-

TION TO PHYSICIAN FEE SCHEDULE.—Insofar as physicians' services under this section are furnished by non-physician practitioner or a supplier other than a physician—

"(i) any reference in this subsection to a physician shall be a reference to such practitioner or supplier; and

"(ii) any reference to a physician specialty organization is deemed a reference to a specialty organization representing the speciality of such practitioners or suppliers.

"(2) SELECTION PROCESS FOR MEASURES.—

"(A) SUBMISSION OF PROPOSED MEASURES TO CONSENSUS-BUILDING ORGANIZATION.—

"(i) BY PHYSICIAN SPECIALTY ORGANIZATIONS.—The Secretary shall request each physician specialty organization to submit to the consensus-building organization by March 1, 2006, proposed Q & E measures described in clauses (i) through (vii) of paragraph (1)(C) that would be applicable to clinical care that billing units under this part practicing in the specialty

provide to individuals enrolled under this part.

''(ii) BY SECRETARY.—If the physician specialty organization for a physician specialty has not submitted proposed Q & E measures under clause (i) by March 1, 2006, the Secretary shall submit, as soon as possible but not later than April 1, 2006, proposed Q & E measures described in clauses (i) through (vii) of paragraph (1)(C) for such specialty to the consensus-building organization.

''(iii) CONSENSUS-BUILDING ORGANIZATION DEFINED.—For purposes of this paragraph, the term 'consensus-building organization' means an organization, such as the National Quality Forum, that the Secretary identifies as—

''(I) having experience in using a process (such as the process described in OMB circular A–119 published in the Federal Register on February 10, 1998) for reaching a group consensus with respect to measures, such as Q & E measures, relating to performance

of those providing health care services; and

''(II) including in such process representatives of the Secretary, practicing physicians (and, as provided under paragraph (1)(E), practicing non-physician practitioners and other suppliers), practitioners with experience in the care of the frail elderly and individuals with multiple complex chronic conditions, organizations and individuals representative of the specialty involved, individuals enrolled under this part, experts in health care quality and efficiency, and individuals with experience in the delivery of health care in urban, rural, and frontier areas and to underserved populations.

''(B) RECOMMENDATIONS BY CONSENSUS-BUILDING ORGANIZATION.—The consensus-building organization that receives proposed measures under subparagraph (A) is requested to submit to the Secretary by July 1, 2006, recommendations respecting the Q & E measures

described in clauses (i) through (vii) of paragraph (1)(C) to be implemented under this subsection.

''(C) SECRETARIAL SELECTION.—The Secretary shall select Q & E measures described in paragraph (1)(C) for purposes of this subsection consistent with the following:

''(i) USE OF RECOMMENDATIONS FOR CLINICAL CARE MEASURES SUBMITTED BY CERTAIN ORGANIZATIONS.—Except as provided in clause (ii), the Secretary shall not select a Q & E measure described in clauses (i) through (vii) of paragraph (1)(C) and relating to clinical care unless that measure has been submitted by a physician specialty organization (or through a physician-consensus building process, such as the Physician Consortium for Performance Improvement) and recommended by the consensus-building organization under subparagraph (B).

''(ii) PROVISION BY REGULATION.—The Secretary may by regulation select—

''(I) Q & E measures described in clauses (i) through (vii) of paragraph

(1)(C) and relating to clinical care that do not meet the requirements of clause (i) only if the Secretary determines that there were no, or insufficient, recommendations regarding such Q & E measures under such clause; and

''(II) Q & E measures described in clause (viii) or (ix) of paragraph (1)(C) and Q & E measures described in clause (i) through (vii) of such paragraph that do not relate to clinical care.

''(D) PERIODIC REVISION OF SELECTION.—The Secretary shall provide for the periodic revision and selection of Q & E measures consistent with the provisions of this paragraph and paragraph (1) and the application of such revised Q & E measures on a prospective basis for a following year.

''(3) RATINGS OF PHYSICIANS BASED ON MEASURES.—

''(A) RATINGS AND IDENTIFICATION OF QUALITY PERFORMANCE.—

"(i) IN GENERAL.—The Secretary shall determine a single rating of each billing unit under this part based on Q & E measures selected under paragraph (2) and information reported under paragraph (4). Such a rating shall be determined for a billing unit based on its performance on Q & E measures relative to the performance of its peers.

"(ii) NO DIRECT DISCLOSURE OF RATING.—Subject to subparagraph (B), the Secretary shall not make such ratings of identifiable billing units under this part available other than to the respective unit.

"(iii) IMPROVEMENT AND PERFORMANCE THRESHOLDS.—For specification of improvement and performance thresholds, see paragraph (5)(D).

"(B) DISCLOSURE OF PERFORMANCE IN RELATION TO PERFORMANCE THRESHOLDS.—

"(i) IN GENERAL.—Subject to the succeeding provisions of this subparagraph, each year the Secretary shall make widely available to the public the following infor-

mation regarding a billing unit's performance on the Q & E measures:

"(I) Whether the unit was a new billing unit or otherwise had insufficient data to provide for a measurement of whether it met the performance objectives under paragraph (5)(C).

"(II) For any other unit, whether the unit met the performance objectives under such paragraph.

"(ii) LIMITATION DURING FIRST 2 YEARS.—During 2007 and 2008, the Secretary shall not make the information under clause (i) with respect to an identifiable billing unit available other than to the respective unit.

"(iii) PHYSICIAN NOTIFICATION AND OPPORTUNITY FOR COMMENT OR APPEAL.—Before making information under clause (i) available with respect to a billing unit under this part for years beginning with 2009, the Secretary shall notify the unit of the performance on Q & E measures (including information on the unit's

performance in relation to performance objectives and aggregate information regarding the performance of peers) and provide the opportunity for the unit to provide written comments regarding the unit's performance. The Secretary shall respond in writing to the comments and seek to reach agreement on the unit's performance and shall establish a formal appeals process in the event of continued disagreement concerning such performance. Upon conclusion of the appeals process, if the unit provides comments relating directly to the final determination under clause (i) respecting such performance, the Secretary shall disclose such comments with the disclosure of the information under such clause.

''(iv) APPLICATION OF HIPAA PRIVACY RULES.—Nothing in this subparagraph shall be construed as changing or affecting the application of rules promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

''(C) PEERS DEFINED.—For purposes of this subsection, the term 'peers' means, with re-

spect to a billing unit under this part that practices in a specialty in an MA region (as established under section 1858(a)(2)), other billing units under this part that practice in the same specialty in the same region, or, beginning with the update for 2012, or in the United States.

''(4) REPORTING ON PERFORMANCE BEGINNING WITH 2007.—For purposes of, and in order to be provided a higher update under, subsection (d)(7) beginning with 2007, each billing unit under this part may submit information on performance on the Q & E measures selected under this subsection with respect to individuals enrolled under this part. Such information shall be submitted in a form and manner and time specified by the Secretary, which may include submission as part of claims data under this part. The Secretary shall provide a process for auditing the accuracy of the information submitted under this paragraph.

''(5) INCENTIVES BASED ON PERFORMANCE BEGINNING WITH 2009.—

''(A) IN GENERAL.—For purposes of, and in order to be provided an increased update under, subsection (d)(7) for 2009 and each subsequent year and for purposes of disclosure

under paragraph (3)(B), the Secretary shall establish quality and efficiency performance objectives for billing units under this part.

''(B) INCREASED UPDATE.—For purposes of subsection (d)(7), such a billing unit is considered to meet performance objectives for a year if, based on ratings under paragraph (3)—

''(i) the unit has demonstrated clear improvement (as determined in accordance with improvement standards specified by the Secretary under subparagraph (D)) in performance from its performance in the previous year; or

''(ii) the unit's performance meets or exceeds the performance thresholds specified by the Secretary under subparagraph (D).

''(C) DISCLOSURE.—For purposes of paragraph (3)(B), such a billing unit is considered to meet performance objectives for a year if, based on the unit's rating under paragraph (3)(A), the unit's performance meets or exceeds the performance thresholds specified by the Secretary under subparagraph (D).

''(D) IMPROVEMENT STANDARDS AND PERFORMANCE THRESHOLDS.—The Secretary shall specify improvement standards under subparagraph (B)(i) and the performance thresholds under subparagraphs (B)(ii) and (C) before the beginning of the year involved.

''(E) TREATMENT OF CASES OF INSUFFICIENT INFORMATION.—A billing unit is deemed to meet performance objectives under subparagraphs (B) and (C) if the unit complied with the reporting requirement under paragraph (4) but there was insufficient information, as determined by the Secretary, to provide a valid measure of performance.

''(6) REVIEW OF ADDITIONAL EXPENSES.—Not later than May 1, 2008, and after consultation with the medical community, the Secretary shall review, and report to Congress on, the extent to which billing unit compliance with the reporting provisions of paragraph (4) results in increased work and practice expenses to billing units.

''(7) PHYSICIAN AND BENEFICIARY EDUCATION.—During 2006, the Secretary shall establish a program to educate billing units under this part and individuals enrolled under this part about the

value-based purchasing program under this subsection, including information regarding financial incentives for reporting information on Q & E measures and, beginning in 2009, financial incentives based on performance on such measures.

''(8) ANNUAL REPORT ON GROWTH IN VOLUME OF PHYSICIANS' SERVICES.—

''(A) IN GENERAL.—The Secretary shall report to the Medicare Payment Advisory Commission and Congress by April 1 of each year (beginning with 2006) information on the growth in volume of services per enrollee and growth in expenditures per enrollee, based upon services and expenditures for which payment is based, or related to, the fee schedule established under this section.

''(B) DETAILS.—The information under subparagraph (A) shall—

''(i) be disaggregated by type of service, by geographic area, and by specialty of physicians (or, if applicable, of non-physician practitioners or suppliers);

''(ii) distinguish between growth in expenditures due to price change versus volume change and intensity change; and

''(iii) identify types of service or geographic areas where changes in volume or expenditures are inappropriate or unjustified, taking into account clinical outcomes.

''(C) RECOMMENDATIONS.—Each such report shall include recommendations to respond to inappropriate growth in service volume. Such recommendations may include regulatory or legislative changes, or both.

''(D) MEDPAC RESPONSE.—The Medicare Payment Advisory Committee shall review each report submitted under this paragraph, including recommendations included under subparagraph (C). The Commission shall include in its report to Congress in June following such report an analysis of the Secretary's findings and recommendations.

''(9) EVALUATION; REPORT.—

''(A) EVALUATION.—The Secretary shall provide for an evaluation of the operation of this subsection during the 5-year period in which this subsection is first applied. Such evaluation shall review the impact of this subsection on improving the quality and efficiency of serv-

ices and on access to such services and on the fairness of its implementation.

''(B) REPORT.—The Secretary shall submit to Congress a report on such evaluation by not later than September 30, 2011.

''(10) WAIVER OF ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869 or otherwise of—

''(A) the selection of Q & E measures under paragraphs (1) and (2);

''(B) the development and computation of ratings under paragraph (3)(A), standards and thresholds under paragraph (5)(D), and the application of such standards and thresholds under paragraphs (3)(B), (5)(B), and (5)(C); and

''(C) the definition of peers and new billing units under this subsection.''.

(c) ENDING APPLICATION OF SUSTAINABLE GROWTH RATE (SGR).—Section 1848(f)(1)(B) of such Act (42 U.S.C. 1395w–4(f)(1)(B)) is amended by inserting ''(and before 2005)'' after ''each succeeding year''.

(d) CONFORMING MEDPAC DUTIES.—Section 1805(b)(2) of such Act (42 U.S.C. 1395b–6(b)(2)) is

amended by adding at the end the following new subparagraph:

"(D) REVIEW OF REPORT ON GROWTH IN PHYSICIAN SERVICES.—Specifically, under section 1848(k)(8)(D), the Commission shall review and make recommendations concerning the Secretary's report on the growth of physicians' services under section 1848.".

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